

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MASSACHUSETTS

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STEVEN R. KINCAID,	)	
	)	
	)	
Plaintiff,	)	CA No. 04 CV 11522 WGY
	)	
vs.	)	
	)	
BANK OF AMERICA CORPORATION,	)	
	)	
Defendant.	)	
	)	

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**DEFENDANT'S MOTION FOR LEAVE TO UTILIZE  
PREVIOUSLY DISCLOSED TREATMENT NOTES AND  
TO QUESTION PLAINTIFF'S PSYCHIATRIST REGARDING SUCH NOTES**

**INTRODUCTION**

Defendant Bank of America Corporation ("Bank of America" or "the Bank") hereby moves for leave to utilize previously disclosed psychiatric treatment notes pertaining to the Plaintiff, and to question Plaintiff's psychiatrist regarding those records, during the trial of this case.

In support of this motion, the Bank states that it should be permitted to use the notes in this manner because Plaintiff has waived the psychotherapist-patient privilege by (1) placing his mental state at issue in this litigation and claiming more than "garden variety" emotional distress; (2) providing a written authorization for the use and disclosure of the notes in question; (3) testifying with regard to the notes and associated counseling session with his psychiatrist; and (4) failing to establish that his waiver was vitiated because of fraud, incapacity or duress.

In further support of this motion, the Court is respectfully referred to the accompanying memorandum, and the Affidavit of Richard Kane.

**REQUEST FOR HEARING**

The Bank requests a hearing on this motion.

BANK OF AMERICA CORPORATION,  
Defendant  
By its attorneys,

/s/Siobhan Sweeney  
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Dated: January 4, 2006.

**Certification of Conference Pursuant to LR 7.1**

I hereby certify that prior to filing, the parties, through their counsel, have conferred with respect to Defendant's Motion For Leave To Utilize Previously Disclosed Treatment Notes And To Question Plaintiff's Psychiatrist Regarding Those Notes, and the issues raised therein, in an effort to narrow the areas of disagreement.

/s/ Siobhan Sweeney

